

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

FILED
SEP 27 10 11 37
SOUTHERN DISTRICT
OF INDIANA
LAURENCE BRIGGS

UNITED STATES OF AMERICA,)
)
Plaintiff,)
v.) Cause No. IP 00-0977-C-T/G
)
HOOSIER CALCIUM CORPORATION,)
)
Defendant.)

CONSENT DECREE

1. Plaintiff, United States of America, on behalf of the Administrator of the United States Environmental Protection Agency (U.S. EPA), filed a complaint in this action against Defendant Hoosier Calcium Corporation (Hoosier) alleging violations of Section 113(b) of the Clean Air Act (Act), 42 U.S.C. § 7413(b), at Hoosier's limestone crushing facility located in Stinesville, Monroe County, Indiana (Stinesville facility or facility).

2. The Complaint alleges that Hoosier violated federally-approved particulate matter emissions limits in the Indiana State Implementation Plan; failed to install and operate control equipment as required by its federally enforceable construction permit and an administrative order issued by the U.S. EPA; and failed to provide timely information required by a U.S. EPA information request.

3. Pursuant to the authority of Section 113(b) of the Act, 42 U.S.C. § 7413(b), the Complaint seeks injunctive relief and the imposition of civil penalties for violations of the Act.

4. Hoosier Calcium is a "person" as defined at Section 302(e) of the Act, 42 U.S.C. § 7602(e).

*cc: Woodlums
3-27-02*

5. Pursuant to Section 109 of the Act, 42 U.S.C. § 7409, the Administrator of U.S. EPA (Administrator) has promulgated national ambient air quality standards (NAAQS) for certain listed air pollutants. The NAAQS for particulate matter is set forth at 40 C.F.R. § 50.7.

6. Under Section 107(d) of the Act, 42 U.S.C. § 7407(d), each state is required to designate those areas within its boundaries in which air quality is better than the NAAQS for each listed pollutant, those areas in which it is worse, and those areas which cannot be classified due to insufficient data. The Administrator thereafter is required to promulgate a list of such areas, with such modifications as she deems necessary. An area which meets the NAAQS for a particular pollutant is termed an "attainment" area. An area which does not meet the NAAQS is termed a "nonattainment" area. An area which cannot be classified due to insufficient data is termed "unclassifiable."

7. The State of Indiana has designated Monroe County, where the Stinesville facility is located, as an unclassifiable area for particulate matter. U.S. EPA approved this designation. 40 C.F.R. § 81.315. Pursuant to 326 IAC 1-2, for purposes of establishing emissions limitations, unclassifiable areas are comparable to attainment areas.

8. Section 110(a) of the Act, 42 U.S.C. § 7410(a), requires each state to submit to the Administrator for approval or disapproval, a SIP for the implementation, maintenance and enforcement of the NAAQS.

9. On June 17, 1987, the Administrator of the U.S. EPA approved Indiana Administrative Code Rule 326 IAC 5-1, and on June 15, 1995, U.S. EPA approved the recodification of 326 IAC 5-1 into the federally enforceable Indiana State Implementation Plan (SIP). On May 31, 1972, the Administrator of U.S. EPA approved into the federally enforceable

Indiana SIP Administrative Code Rule 6-3, which contains particulate emission standards.

10. Rule 5-1(a)(1)(A) prohibits any source in an attainment area from emitting visible emissions in excess of an average of 40 percent opacity in 24 consecutive 15-second visible emission readings. Rule 5-1(a)(1)(B) prohibits any source in an attainment area from emitting visible emissions in excess of 60 percent opacity for more than a cumulative total of 15 minutes in a 6-hour period.

11. Rule 5-1-5(a) provides that a violation of Rule 5-1 constitutes prima facie evidence of a violation of other applicable particulate emission control regulations, including Rule 6-3, unless refuted by a properly conducted performance test.

12. On May 14 1973, U.S. EPA approved into the Indiana SIP Indiana's Air Pollution Control Board Regulation (APC) 19, which established operating and construction permit requirements to ensure that the state attained and maintained the NAAQS. On August 7, 1980, the Administrator incorporated by reference into the Indiana SIP the provisions of 40 C.F.R. § 52.21(b) through (w).

13. APC 19 and 40 C.F.R. § 52.21(r) require a permittee to comply with the terms of its construction permit.

14. Defendant owns and operates a limestone crushing operation located at Rural Route 2, Stinesville Road North, Monroe County, Stinesville, Indiana, which includes crushing, drying and screening, transfer and storage operations, and is permitted to operate at a process throughput of 125 tons/hour. Therefore, Defendant is subject to visible emission limitations set forth in Rule 5-1 and the particulate emission limitations set forth in Rule 6-3.

15. On June 14, 2000, the United States filed its Complaint in this action.

Defendant filed its Answer to the Complaint on September 1, 2000.

16. The parties recognize and the Court, by approving and entering this Consent Decree, finds that the parties have negotiated this Consent Decree in good faith; implementing this Consent Decree will avoid prolonged and complicated litigation between the parties; and this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, IT IS ADJUDGED, ORDERED, AND DECREED THAT:

I. JURISDICTION AND VENUE

17. This is a civil action for violations of the Clean Air Act, 42 U.S.C. §§ 7401, et seq.

18. The Court has jurisdiction over the subject matter and parties to this action under Section 113(b) of the Act, 42 U.S.C. § 7413(b), and 28 U.S.C. §§ 1345 and 1355.

19. Venue is proper in the District under Section 113 (b) of the Act, 42 U.S.C. § 7413(b) and 28 U.S.C. §§ 1391(b) and 1395(a).

II. APPLICABILITY

20. This Consent Decree applies to and binds the parties to this Decree, their officers, directors, employees, contractors, and successors in interest. Defendant shall give written notice of this Consent Decree to any successors in interest before transfer of interest. Defendant simultaneously shall notify U.S. EPA that it has provided notice pursuant to this paragraph.

21. No change in ownership or corporate status shall in any way alter the Defendant's responsibilities under this Consent Decree.

22. If Defendant proposes to sell or transfer any real property or operations subject to this Consent Decree, Defendant shall make the purchasing party's compliance with the Consent Decree a condition of any sale of any portion of the facility that is subject to the Consent Decree.

23. In any action to enforce this Consent Decree, Defendant shall not raise as a defense the failure by any its officers, directors, employees, agents, servants, successors or assigns to take actions necessary to comply with the Consent Decree.

24. The parties are entering into this Consent Decree to resolve the claims in this action, which relate to the fine-grind, crushing and drying of limestone, in a manner which is in the public interest and to avoid the expense and the burdens of continued litigation. There has been no trial or adjudication of any issue of fact or law.

III. COMPLIANCE PROGRAM

25. Defendant shall achieve and demonstrate compliance with the Act, the Indiana SIP, and all applicable air quality regulations at the facility according to the following schedule:

<u>Milestone</u>	<u>Compliance Date</u>
a. Cease all outside storage of crushed limestone, unless permitted by IDEM.	Effective date of Consent Decree
b. Inventory all access covers on its conveyor lines to determine which are broken or missing, and develop a schedule to replace or repair all broken or missing access covers.	11-1-01
c. Develop an inspection log listing all conveyors and providing space to note the time that each conveyor is inspected, the condition of the access cover for each, and whether the access cover is closed.	11-1-01
d. Develop operating procedures detailing proper operation and maintenance for the baghouses and develop inspection checklist.	11-1-01
e. Begin full operation of final storage bin baghouses.	4-1-02
f. Replace or repair all broken or missing access covers.	1-1-02
g. Begin to inspect the conveyors daily to determine whether the access covers are closed and maintained in proper working order, and to repair or replace within seven days any cover that is missing	12-1-01

or broken.

- h. Purchase baghouse for the screenhouse. 12-1-01
- i. Begin installation of baghouse on screenhouse. 2-1-02
- j. Begin full operation of the screenhouse baghouse. 4-1-02
- k. Remove and store indoors or in an appropriate storage device, or move off-site, all crushed limestone stored or discarded outside which causes or may cause fugitive dust. 11-1-01
- l. Achieve and maintain compliance with Indiana SIP and all applicable permit requirements. 4-1-02

26. Should Defendant fail to achieve and maintain compliance by April 1, 2002, Defendant shall shut down the facility and discontinue operations permanently.

27. Defendant shall operate each baghouse at all times that the unit from which it controls emissions is operating.

28. If Defendant determines that any baghouse is not operating, Defendant immediately shall shut down the processing unit and baghouse and replace the broken bag or broken device.

IV. RECORDKEEPING AND REPORTING

29. Within 30 days of each milestone date in paragraph 25, above, Defendant shall submit to U.S. EPA evidence of having timely complied with the milestone.

30. Beginning with the date that Defendant begins operation of any baghouse, Defendant shall inspect the baghouse daily, using the inspection checklist, to determine compliance with the operating procedures and the Indiana SIP.

31. Defendant shall maintain each inspection checklist at the facility and shall make

them available to U.S. EPA or the Indiana Department of Environmental Management at reasonable times, upon request.

V. STIPULATED PENALTIES

32. Defendant shall pay stipulated penalties for violations of this Consent Decree as follows:

- a. \$200 per day for each day Defendant fails to submit any report or information required by paragraph 29, above, or fails to maintain or make available inspection checklists required by paragraph 31, above.
- b. \$500 per day for each day Defendant fails to inspect the baghouses and complete the daily checklist required by paragraph 30, above.
- c. \$1,000 per day for each day Defendant fails to comply with any requirement of paragraph 25 of the Consent Decree.
- d. \$1,000 per day per violation if Defendant fails to operate a baghouse at all times that the unit from which it controls emissions is operating, as required by paragraphs 27 and 28.

33. Defendant shall pay stipulated penalties within 30 days of the date on which the violation of the Consent Decree occurs.

34. Defendant shall pay stipulated penalties in the same manner as is specified in paragraph 36 for payment of civil penalties.

35. The United States may seek any legal or equitable relief for violations of this Consent Decree, including, but not limited to, injunctive relief, and civil or criminal contempt sanctions. Where acts or omissions that violate this Consent Decree also violate the Act, the

United States may elect, in its sole discretion, to seek civil penalties under Section 113(b) of the Act. If the United States elects to seek civil penalties under Section 113(b) of the Act, the amount of any timely paid stipulated penalties for such violation shall be deducted from the amount of the civil penalty for such violation.

VI. CIVIL PENALTIES

36. No later than December 3, 2001, Defendant shall pay a civil penalty of \$20,000 to the United States of America. Defendant shall pay the civil penalty by Fed Wire Electronic Funds Transfer (EFT) pursuant to written instructions to be provided to Defendant by the United States. Defendant shall advise the Financial Litigation Unit of the United States Attorney's Office for the Southern District of Indiana at the time payment is being wire-transferred. In addition, Defendant shall confirm to U.S. EPA and the Department of Justice in accordance with Section XI, below, that Defendant has paid the penalty. Defendant shall pay interest and late charges as specified in paragraph 37.

37. If Defendant fails to pay timely the civil penalties due under this Consent Decree, Defendant shall be liable for interest and penalties, as follows:

- a. Interest at the percentage rate established by the Department of Treasury pursuant to 31 U.S.C. § 3717, for any period after the due date;
- b. A handling charge of \$15 each month that the penalty is more than 30 days past due; and
- c. A six percent per year penalty assessed monthly if the penalty is more than 90 days past due.

VII. DISPUTE RESOLUTION

38. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of the Defendant that have not been disputed in accordance with this Section.

39. The parties shall make reasonable, good faith efforts to resolve informally all disputes or differences of opinion regarding the meaning or implementation of this Consent Decree. If the parties cannot resolve any such dispute, the interpretation advanced by U.S. EPA shall be considered binding unless, within 15 days after the conclusion of the informal negotiation period, Defendant invokes the dispute resolution provisions of this Section.

40. Defendant shall invoke the formal dispute resolution procedures set forth in paragraphs 40 through 44 by serving on the United States a written statement of position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by the Defendant. Within 15 days after receipt of Defendant's statement of position, U.S. EPA will serve on Defendant its statement of position, which shall include, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by U.S. EPA. Within 10 days after receipt of U.S. EPA's statement of position, Defendant may submit a reply.

41. Following receipt of Defendant's statement of position and reply, if any, submitted pursuant to paragraph 40, the Director of the Air Division, U.S. EPA Region 5, will issue a final decision resolving the dispute. The Air Division Director's decision shall be binding

on the Defendant unless, within 15 days of receipt of such decision, the Defendant files with the Court and serves on the United States a motion for judicial review of the decision setting forth the matter in dispute, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. Any response by the United States must be filed within 15 days of the date that Defendant's motion is due.

42. Judicial review of any dispute governed by this paragraph shall be governed by applicable principles of law.

43. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone, or affect in any way any obligation of the Defendant under this Consent Decree, not directly in dispute, unless U.S. EPA or the Court agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first day of violation of any applicable provision of this Consent Decree, but payment shall be stayed pending resolution of the dispute. If Defendant does not prevail on the disputed issue, stipulated penalties shall be paid as provided in paragraph 32.

44. In proceedings on any dispute governed by paragraphs 41 through 43, Defendant shall have the burden of demonstrating that the decision of the Air Division Director is arbitrary and capricious or otherwise not in accordance with law.

VIII. INSPECTIONS

45. U.S. EPA or its authorized representatives shall have the right of entry to Defendant's plant to carry out any inspections and, at reasonable time, to conduct any sampling or tests which U.S. EPA believes necessary to ensure compliance with this Consent Decree. The authority granted under this paragraph is in addition to U.S. EPA's right of entry and inspection

under Section 114 of the Act, 42 U.S.C. § 7414.

IX. PUBLIC ACCESS TO INFORMATION

46. All information and documents submitted by Defendant to U.S. EPA pursuant to this Consent Decree shall be subject to public inspection, unless identified and supported by Defendant as confidential business information in accordance with 40 C.F.R. Part 2.

47. If no claim of confidentiality accompanies documents or information when Defendant submits them to U.S. EPA, the public may be given access to such documents or information without further notice in accordance with 40 C.F.R. Part 2, Subpart B.

X. NOTICES AND SUBMISSIONS

48. Unless otherwise provided here, notifications to or communications with U.S. EPA or the Department of Justice shall be deemed submitted on the date they are postmarked and sent either by overnight receipt mail service or by certified or registered mail, return receipt requested.

49. Unless this Consent Decree states otherwise, all notices, submissions, or communications in connection with this Consent Decree shall be addressed as follows:

To U.S. EPA:

Chief, Air Enforcement and Compliance
Assurance Branch
Air and Radiation Division, AE-17J
EPA, Region V
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

To the Department of Justice:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044
(reference: DOJ No. 90-5-2-1-06730).

50. A duly authorized representative of the Defendant having knowledge of the contents of any notice or report required by this Consent Decree shall sign and certify that the information in the notice or report is true and complete. Defendant shall use the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to ensure that qualified personnel properly gather and evaluate the information submitted. Based upon my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

The Defendant shall not object to the admissibility in evidence of any such reports in any proceeding to enforce this Consent Decree.

XI. SCOPE OF SETTLEMENT

51. The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that Defendant's complete compliance with this Consent Decree will result in compliance with the provisions of the Act, its implementing regulations, or any permit. Notwithstanding U.S. EPA's review and approval of any plans formulated pursuant to this Consent Decree, Defendant shall remain solely responsible for compliance with the Act, its implementing regulations, and this Consent Decree.

XII. EFFECTIVE DATE

52. This Consent Decree shall be effective upon entry by this Court.

XIII. TERMINATION

53. This Consent Decree may be terminated in accordance with the provisions of this paragraph after the Defendant certifies that it is in compliance with all requirements of this Consent Decree and with the Compliance Program set forth in paragraph 25. Defendant should make the certification in the manner indicated in paragraph 50. Upon meeting these conditions of termination, the Defendant shall notify U.S. EPA. If U.S. EPA agrees with the Defendant, the parties shall file a joint motion with the Court to terminate this Consent Decree.

XIV. RETENTION OF JURISDICTION

54. This Court shall retain jurisdiction to modify or enforce the terms of this Consent Decree or to take any action necessary or appropriate for its construction or execution.

XV. PUBLIC COMMENT

55. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment in accordance with the provisions of 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments received disclose facts or consideration which indicate that the Consent Decree is inappropriate, improper, or inadequate. If the United States receives no public comments or proposed changes, Defendant consents to entry of the Consent Decree without further notice.

XVI. FORCE MAJEURE

56. If any event occurs that causes or may cause the Defendant to violate any provision of this Consent Decree, Defendant shall notify the United States in writing within five

days of the date on which the Defendant knew or should have known of such event. The notice shall state the anticipated duration of the violation, its cause(s), Defendant's past and proposed actions to prevent or minimize the violation, and a schedule to carry out those actions. The Defendant shall take all reasonable measures to avoid or minimize any such violation. If Defendant fails to give notice according to this paragraph, Defendant shall not be excused for a violation of this Consent Decree based on an alleged force majeure event.

57. If the parties agree that the violation has been or will be caused by circumstances entirely beyond the control of the Defendant, or any entity controlled by the Defendant, including the Defendant's consultants and contractors, and the Defendant could not have prevented such violation, the parties may extend the deadline to comply with the requirement for a period not to exceed the actual delay resulting from such circumstances, and stipulated penalties shall not be due for the delay.

58. The Defendant shall bear the burden of proving that circumstances entirely beyond the control of the Defendant or any entity controlled by or under the common control of the Defendant caused the delay.

59. Unanticipated or increased costs, and changed financial circumstances are not circumstances entirely beyond the control of the Defendant.

60. An extension of one compliance date based on a particular incident does not result in an extension of a subsequent compliance date or dates. The Defendant must make an individual showing of proof regarding each delayed incremental step or other requirement for which it seeks an extension.

XII. CONTINUING JURISDICTION

61. The Court shall retain jurisdiction after entry of this Consent Decree to modify or enforce its terms or to take any action necessary or appropriate for its construction or execution.

XVIII. GENERAL PROVISIONS

62. This Consent Decree resolves the civil claims of the United States for the violations alleged in the Complaint in this action through the date of lodging of the Consent Decree. This Consent Decree does not resolve any criminal liability of the Defendant.

63. Compliance with this Consent Decree does not affect Defendant's obligation to comply with all applicable provisions of federal, state or local law, or regulations, or with any order of the Court, including but not limited to, an order pursuant to Section 303 of the Act, 42 U.S.C. § 7603; nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit.

64. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, civil penalties, or other appropriate relief relating to violations of the Indiana SIP, Defendant shall not assert, and may not maintain, any defense or claim based upon the principles or waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case, provided, however, that Defendant may assert a statute of limitations or laches defense as appropriate.

65. This Consent Decree does not limit or affect the rights of Defendant or the United States as against any third parties.

66. Each party to this action shall bear its own costs and attorney's fees; provided,

however, that should Defendant subsequently be determined to have violated the terms of this Consent Decree, then Defendant shall be liable to the United States for any costs and attorney's fees incurred by the United States in any actions against Defendant for violation of this Consent Decree.

67. Any modification of this Consent Decree must be in writing and approved by the Court. All parties to this Consent Decree must sign any such written modification.

XIX. SIGNATORIES

68. Each undersigned representative of Hoosier Calcium Corporation and Department of Justice certifies that he or she is fully authorized to sign this Consent Decree for the party whom he or she represents and to bind that party to its terms.

69. Defendant consents to the entry of this Decree without further notice.

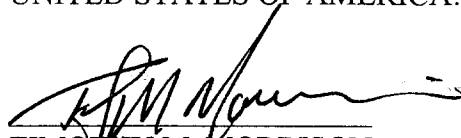
SO ORDERED THIS 12th DAY OF March, 2002
John Daniel Tinder

United States District Judge

Through their undersigned representatives, the parties agree and consent to entry of the foregoing Consent Decree in United States of America v. Hoosier Calcium Corporation Cause No. IP00--977C-T/G (SD Ind).

FOR PLAINTIFF
UNITED STATES OF AMERICA:

Date: 9/26/01

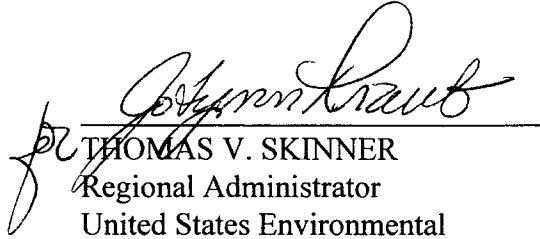
A handwritten signature in black ink, appearing to read "T. M. Morrison", is written over a horizontal line.

TIMOTHY M. MORRISON
UNITED STATES ATTORNEY
SOUTHERN DISTRICT OF INDIANA

Through their undersigned representatives, the parties agree and consent to entry of the foregoing Consent Decree in United States of America v. Hoosier Calcium Corporation Cause No. IP00--977C-T/G (SD Ind).

Date: _____

9/25/01

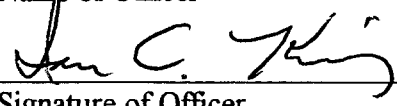

THOMAS V. SKINNER
Regional Administrator
United States Environmental
Protection Agency, Region 5

CONSENT DECREE: United States of America v. Hoosier Calcium Corporation
Cause No. IP00--977C-T/G

FOR DEFENDANT,
HOOSIER CALCIUM CORPORATION

(Please type or print, except for
signature line for Officer)

Ian C. King

Name of Officer


Signature of Officer

President

Title
8383 Stinesville Rd North

R.R. #3 Gosport, IN 47433

Address

812-876-7551

Telephone Number

If different from above, the following is the name and address of Defendant's agent for service and the name and address of Defendant's counsel. Counsel may act as agent for service.

Agent for Service is attorney

Attorney

Name

Ronald L. Chapman 3189-53

Name

P.O. Box 521

Address

Bloomington, IN 47402-0521

Address

812-333-9900 FAX 812-333-9902

Telephone